

Department of Health
Notice of Rulemaking Hearing
Board of Chiropractic Examiners
Division of Health Related Boards

There will be a hearing before the Tennessee Board of Chiropractic Examiners to consider the promulgation of an amendment to a rule and a new rule pursuant to T.C.A. §§ 4-5-202, 4-5-204, 63-2-101, 63-2-102, 63-4-101, 63-4-106, 63-4-112, and 63-4-114. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Tennessee Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 3:30 p.m. (CST) on the 2nd day of February, 2006.

Any individuals with disabilities who wish to participate in these proceedings (review these filings) should contact the Department of Health, Division of Health Related Boards to discuss any auxiliary aids or services needed to facilitate such participation or review. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date such party intends to review such filings), to allow time for the Division to determine how it may reasonably provide such aid or service. Initial contact may be made with the ADA Coordinator at the Division of Health Related Boards, First Floor, Cordell Hull Building, 425 Fifth Avenue North, Nashville, TN 37247-1010, (615) 532-4397.

For a copy of the entire text of this notice of rulemaking hearing contact:

Jerry Kosten, Regulations Manager, Division of Health Related Boards, 425 Fifth Avenue North, First Floor, Cordell Hull Building, Nashville, TN 37247-1010, (615) 532-4397.

Substance of Proposed Rules

Amendments

Rule 0260-2-.12 Continuing Education, is amended adding the following language as new subparagraph (6) (d):

- (6) (d) Courses that pertain to the promotion and growth, and the business management of a chiropractic practice.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-4-106, and 63-4-112.

New Rule

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0260-2-.25 Chiropractic Records

0260-2-.25 Chiropractic Records.

- (1) Purposes – The purposes of these rules are:
 - (a) To recognize that chiropractic records are an integral part of the practice of chiropractic as defined in T.C.A. § 63-4-101.
 - (b) To give chiropractic physicians, their professional and non-professional staff, and the public direction about the content, transfer, retention, and destruction of those records.
 - (c) To recognize that a distinction exists between a chiropractic physician's records for a patient receiving services in the chiropractic physician's office and those records created by the chiropractic physician for that patient for purposes of services provided in a hospital as defined by T.C.A. § 68-11-302 (4).
- (2) Conflicts – As to chiropractic records, these rules should be read in conjunction with the provisions of T.C.A. §§ 63-2-101 and 102, and are not intended to conflict with those statutes in any way. Those statutes, along with these rules, govern the subjects that they cover in the absence of other controlling state or federal statutes or rules to the contrary.
- (3) Applicability – These rules regarding chiropractic records shall apply only to those records, the information for which was obtained by chiropractic physicians or their professionally licensed employees, or those over whom they exercise supervision, for purposes of services provided in any clinical setting other than those provided in a hospital as defined by T.C.A. § 68-11-302 (4), a hospital emergency room or hospital outpatient facility.
- (4) Chiropractic Records
 - (a) Duty to Create and Maintain Chiropractic Records – As a component of the standard of care and of minimal competency a chiropractic physician must cause to be created and cause to be maintained a chiropractic record for every patient for whom he or she, and/or any of his or her professionally licensed supervisees, performs services or provides professional consultation.
 - (b) Notice – Anywhere in these rules where notice is required to be given to patients of any chiropractic physician that notice shall be required to be issued within thirty (30) days of the date of the

event that triggers the notice requirement, and may be accomplished by public notice.

- (c) Distinguished from Hospital Records - The chiropractic records covered by these rules are separate and distinct from those records generated for the patient by the chiropractic physician during the course of providing chiropractic services for the patient in a hospital as defined by T.C.A. § 68-11-302 (4).
 - 1. The provisions of T.C.A. Title 68, Part 11, Chapter 3 govern records generated in a hospital as defined by T.C.A. § 68-11-302 (4).
 - 2. The chiropractic records covered by these rules are those:
 - (i) That are created prior to the time of the patient's admission to or confinement and/or receipt of services in a hospital as defined by T.C.A. § 68-11-302 (4), hospital emergency room and/or hospital outpatient facility, and/or
 - (ii) That are created after the patient's discharge from a hospital as defined by T.C.A. § 68-11-302 (4), hospital emergency room or hospital outpatient facility.
 - (iii) That are created during the practice of chiropractic as defined by T.C.A. § 63-4-101 outside of a hospital as defined by T.C.A. § 68-11-302 (4), hospital emergency room or hospital outpatient facility.
 - 3. Even though the records covered by these rules may, of necessity, reference provision of services in the hospital setting and the necessary initial work-up and/or follow-up to those services, that does not make them "hospital records" that are regulated by or obtainable pursuant to T.C.A. Title 68, Part 11, Chapter 3.
- (d) Content – All chiropractic records, or summaries thereof, produced in the course of the practice of chiropractic for all patients shall include all information and documentation listed in T.C.A. § 63-2-101 (c) (2) and such additional information that is necessary to insure that a subsequent reviewing or treating chiropractic physician can both ascertain the basis for the diagnosis, treatment plan and outcomes, and provide continuity of care for the patient.

(e) Transfer

1. Records of Chiropractic Physicians upon Death or Retirement - When a chiropractic physician retires or dies while in practice, patients seen by the chiropractic physician in his/her office during the immediately preceding thirty-six (36) months shall be notified by the chiropractic physician, or his/her authorized representative and urged to find a new chiropractic physician and be informed that upon authorization, copies of the records will be sent to the new chiropractic physician. This notification requirement shall not apply to a patient when there have been fewer than two (2) office patient encounters within the immediately preceding eighteen (18) months.
2. Records of Chiropractic Physicians upon Departure from a Group - The responsibility for notifying patients of a chiropractic physician who leaves a group practice whether by death, retirement or departure shall be governed by the chiropractic physician's employment contract.
 - (i) Whomever is responsible for that notification must notify patients seen by the chiropractic physician in his/her office during the immediately preceding thirty-six (36) months of his/her departure, except that this notification requirement shall not apply to a patient when there have been fewer than two (2) office patient encounters within the immediately preceding eighteen (18) months.
 - (ii) Except where otherwise governed by provisions of the chiropractic physician's contract, those patients shall also be notified of the chiropractic physician's new address and offered the opportunity to have copies of their chiropractic records forwarded to the departing chiropractic physician at his or her new practice. Provided however, a group shall not withhold the chiropractic records of any patient who has authorized their transfer to the departing chiropractic physician or any other chiropractic physician.
 - (iii) The choice of chiropractic physicians in every case should be left to the patient, and the patient should be informed that upon authorization his/her records

will be sent to the chiropractic physician of the patient's choice.

3. Sale of a Chiropractic Practice - A chiropractic physician or the estate of a deceased chiropractic physician may sell the elements that comprise his/her practice, one of which is its goodwill, i.e., the opportunity to take over the patients of the seller by purchasing the chiropractic physician's records. Therefore, the transfer of records of patients is subject to the following:
 - (i) The chiropractic physician (or the estate) must ensure that all chiropractic records are transferred to another chiropractic physician or entity that is held to the same standards of confidentiality as provided in these rules.
 - (ii) Patients seen by the chiropractic physician in his/her office during the immediately preceding thirty-six (36) months shall be notified that the chiropractic physician (or the estate) is transferring the practice to another chiropractic physician or entity who will retain custody of their records and that at their written request the copies of their records will be sent to another chiropractic physician or entity of their choice. This notification requirement shall not apply to a patient when there have been fewer than two (2) office patient encounters within the immediately preceding eighteen (18) months.
4. Abandonment of Records – For purposes of this section of the rules death of a chiropractic physician shall not be considered as abandonment.
 - (i) It shall be a prima facie violation of T.C.A. § 63-4-114 for a chiropractic physician to abandon his practice without making provision for the security, or transfer, or otherwise establish a secure method of patient access to their records.
 - (ii) Upon notification that a chiropractic physician in a practice has abandoned his practice and not made provision for the security, or transfer, or otherwise established a secure method of patient access to their records patients should take all reasonable

steps to obtain their chiropractic records by whatever lawful means available and should immediately seek the services of another chiropractic physician.

(f) Retention of Chiropractic Records – Chiropractic records, including x-rays, radiographs, and other imaging products shall be retained for a period of not less than ten (10) years from the date of the chiropractic physician's or his supervisees' last professional contact with the patient except for the following:

1. Chiropractic records for incompetent patients shall be retained indefinitely.
2. Chiropractic records of minors shall be retained for a period of not less than one (1) year after the minor reaches the age of majority or ten (10) years from the date of the chiropractic physician's or his supervisees' last professional contact with the patient, whichever is longer.
3. X-rays, radiographs and other imaging products may be destroyed if there exists separate interpretive records.
4. Notwithstanding the foregoing, no chiropractic record involving services which are currently under dispute shall be destroyed until the dispute is resolved.

(g) Destruction of Chiropractic Records

1. No chiropractic record shall be singled out for destruction other than in accordance with established office operating procedures.
2. Records shall be destroyed only in the ordinary course of business according to established office operating procedures that are consistent with these rules.
3. Records may be destroyed by burning, shredding, or other effective methods in keeping with the confidential nature of the records.
4. When records are destroyed, the time, date and circumstances of the destruction shall be recorded and maintained for future reference. The record of destruction need not list the individual patient chiropractic records that were destroyed but shall be sufficient to identify which

group of destroyed records contained a particular patient's chiropractic records.

- (5) Violations – Violation of any provision of these rules is grounds for disciplinary action pursuant to T.C.A. §§ 63-4-114 (1) and/or (12).

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-2-101, 63-2-102, 63-4-101, 63-4-106, and 63-4-114.

Contact who can answer questions concerning this notice of rulemaking hearing, technical contact for disk acquisition, and person who will approve final copy for publication: Jerry Kosten, Regulations Manager, Division of Health Related Boards, First Floor, Cordell Hull Building, 425 Fifth Avenue North, Nashville, TN 37247-1010 615-532-4397.

I certify that this is an accurate and complete representation of the intent and scope of rulemaking proposed by the Tennessee Board of Chiropractic Examiners.

Robbie H. Bell, Director
Health Related Boards

Subscribed and sworn to before me this the 10th day of November, 2005.

Notary Public

My commission expires on the 25th day of March, 2006.

The notice of rulemaking set out herein was properly filed in the Department of State on the ____ day of _____, 2005.

Riley C. Darnell
Secretary of State

By: _____